PUBLIC PROSECUTOR v. H. CHAMRAS TASASO

[R.Cr.J. (Hashim Yeop A. Sani, J.) March 26, 1975]
[Ipoh — Criminal Revision No. 7 of 1975]

Road Traffic Ordinance, 1958, s. 36(1) — Dangerous driving — Inconsiderate driving — Plea of guilty — Hurried justice — Justice should be seen to be done — Criminal Procedure Code (F.M.S. Cap. 6), s. 49.

Criminal Law and Procedure — Plea of guilty — Hurried justice.

An accused person is not to be taken to admit an offence unless he pleads guilty to it in unmistakable terms with appreciation of the essential elements of the offence.

Per Hashim Yeop A. Sani J.: "...an accused person is presumed innocent until proven guilty. The right of the accused in any criminal trial will be ineffective and meaningless unless such right is supported by the spirit and the traditions on which our system is built. The importance of the presumption of innocence lies not on its abstract principle but in the extent to which in actual practice an accused person, irrespective whether he be a citizen or not, is in a position to assert that principle against an over-eager prosecutor or official who may find it easier to build up a case based on the assumption of guilt than by the laborious collection of independent evidence..."

Cases referred to:-

(1) *R.* v. *Golathan* (1915) 84 L.J.K.B. 758 C.C.A.

(2) *R.* v. *Ingleson* [1915] 1 K.B. 512 C.C.A.

(3) *Scott* v. *Scott* [1913] A.C. 417 H.L.

(4) *R.* v. *Governor of Lewes Prison* [1917] 2 K.B. 254.

(5) *R.* v. *Thames Magistrates' Court ex parte Polemis* [1972] 2 All E.R. 1219.

(6) *Lim Seng Gin & Anor.* v. *Regina* [1956] 22 M.L.J. 76.

CRIMINAL REVISION.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for Public Prosecutor.

Defendant absent.

Hashim Yeop A. Sani J.: At the outset let me say this. I would rather live with arrears and backlog of cases, which is I think a lesser evil, than have cases disposed of with such a speed and in such hurried a fashion as would leave in the minds of the ordinary persons a lingering suspicion that something is not right. Justice must not only be done but must manifestly be seen to be done. This case which I have called for revision is a case in point.

As reported in a newspaper earlier this month a magistrate who was driving a car along the Tapah-Bidor trunk road was said to have been forced onto the grass verge by a tourist bus driven by the defendant while the defendant was overtaking the magistrate's car in the presence of another oncoming vehicle. The magistrate then telephoned the Tapah Police who then mounted a roadblock and stopped the defendant's bus. On the same day at a special sitting at 5.00 p.m. the case was dealt with in the Tapah Magistrate's Court presided by a president from Ipoh. The defendant was said to have pleaded guilty to the charge of dangerous driving and a fine of $1,000 was imposed with the additional penalty that he be disqualified from driving in Malaysia for a period of one year. From the records of this case which I have perused the bare facts recorded by the president do not substantially differ from the newspaper report.

On the bare facts as recorded by the president, the defendant may or may not be guilty of the offence of dangerous driving, although the facts if true would certainly disclose an offence of inconsiderate driving under section 36(1) of the Road Traffic Ordinance, 1958. On this ground alone it would be justified for this court to interfere. But there are a number of other factors in consideration of which I have decided to interfere but on more fundamental questions. These are as follows:

(1) The complainant in this case was the magistrate, Tapah. Because obviously he could not sit as a magistrate for this case it has transpired that he asked the president who happened to be in Tapah on that day on non-official business to hear the case. A special sitting was arranged at 5.00 p.m. The defendant who was not represented by counsel pleaded guilty.

Our system of justice has its own traditions. These traditions are based on well established principles. One of these principles is that an accused person is presumed innocent until proven guilty. The right of the accused in any criminal trial will be ineffective and meaningless unless such right is supported by the spirit and the traditions on which our system is built. The importance of the presumption of innocence lies not on its abstract principle but in the extent to which in actual practice an accused person, irrespective whether he be a citizen or not, is in a position to assert that principle against an over-eager prosecutor or official who may find it easier to build up a case based on the assumption of guilt than by the laborious collection of independent evidence. The complaint of the magistrate in this case, like any other complaint by any other person, should only be a preliminary step to a proper investigation before obtaining a summons or warrant as the case may require.

(2) Again it is obvious from the records that the defendant is a Thai, who in his own words in his plea in mitigation, had never come to Malaysia before. Nothing is disclosed on the records that he was able to understand the language of the court. An accused person is not to be taken to admit an offence unless he pleads guilty to it in unmistakable terms with appreciation of the essential elements of the offence. (See *R.* v. *Golathan*[1] and *R.* v. *Ingleson.*[2]) This rule should be more scrupulously observed in the case of an undefended accused or a person probably not versed in the language of the court as in this case.

(3) Another general rule which has been established in our system is that any trial whether in respect of seizable or non-seizable offence must take place in open court where members of the public have a right to be present if there is sufficient accommodation. There is therefore this broad principle that the courts must administer justice in public. This principle is always adhered to subject only to certain narrowly defined exceptions. (See *Scott* v. *Scott*[3] and *R.* v. *Governor of Lewes Prison.*[4]) This right of the public of access to a court of justice would be ineffective and meaningless if "special sittings" of the court are held without sufficient and adequate reasons and without notice and long after the known ordinary working hours of the court.

(4) The very short interval between the alleged commission of the offence and the trial held could also be a breach of the rules of natural justice. A case

quite akin to this but not on all fours is the case of *R.* v. *Thames Magistrates' Court, ex parte Polemis.*[5] There the applicant, a Greek master of a vessel, who had little knowledge of English asked that his conviction by the Thames Magistrates' Court on July 11, 1973 be quashed. The facts of that case are that at 11.30 a.m. on July 11, 1973 a summons was served on the applicant charging that he was the master of a vessel from which oil or a mixture containing oil had been discharged into navigable waters, contrary to the Prevention of Oil Pollution Act 1971. The applicant's vessel was due to sail at 9.00 p.m. on that day and the summons was returnable at the magistrates' court at 2.00 p.m. on that day. At 2.30 p.m. the case came up before a bench of lay justices who rejected an application for adjournment, apparently impressed by the fact that the applicant's vessel was due to sail that evening. As concession however they stood over the hearing until 4.00 p.m. on the same day. At 4.00 p.m. the justices were still occupied with their own list and so the case was transferred to a stipendiary magistrate then sitting in the same building, who heard the case and convicted the applicant. The conviction was quashed and it was held that it was a requirement of the rules of natural justice that a party to proceedings, and particularly the defendant in a criminal case, should be given a reasonable opportunity to present his case, and that included a reasonable opportunity to prepare his case before being called upon to present it. In the judgment of Lord Widgery C.J. in that case the following would provide a good guideline on cases of this nature. He said at page 1225:

"Of course it would then be for their consideration as to what steps could properly be taken to make sure that the captain, the fine and all other trace of the affair did not slip away with the tide. But they would have no difficulty within the powers open to them in taking appropriate steps to that end. One bears in mind to start with that they had the power to remand the captain in custody, which would most effectively ensure that he was still available for disposal on the adjourned hearing date. One does not imagine that in practice such an extreme course would be necessary, but the possibility of that being available as a last resort would no doubt stimulate the shipowners in cases of this kind to make some useful alternative suggestion, either by the provision of sureties for bail, or the deposit of a sum of money for any potential fine or otherwise."

In the circumstances of the present case where the tourist bus was to leave immediately for its destination, wherever it was, our Criminal Procedure Code (F.M.S. Cap. 6) provides ample powers for the court to deal with the situation. The powers are provided in section 49 of the Criminal Procedure Code which reads as follows:—

"49. When any person for whose appearance or arrest any court is empowered to issue a summons or warrant is to present in such court it may require such person to execute a bond with or without sureties for his appearance in such court."

As Spenser Wilkinson J. said in *Lim Seng Gin & Anor.* v. *Regina*[6] there is no doubt that this section confers a wide discretion upon the magistrate to require a person to execute a bond in a proper case and that the wording of that section is sufficiently wide to include also accused persons. In every case of this nature the magistrate should consider invoking this section provided of course that the discretion should be judicially and properly exercised in each case.

Another observation of Lord Widgery C.J. in *Re: Polemis, supra,* is also relevant where he said at page 1223:

"It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say, 'Well, even if the case had been properly conducted, the result would have been the same.' That is mixing up doing justice with seeing that justice is done, so I reject that argument."

On the bare facts as recorded by the president I would under ordinary circumstances consider whether to substitute for the conviction for dangerous driving a conviction for inconsiderate driving under section 36(1) of the Road Traffic Ordinance, 1958. But, in my view, for the better justice of this case and having regard to the fact that there are some unsatisfactory features of the proceeding, which have clearly resulted in a miscarriage of justice, I would prefer to quash the conviction absolutely. A proper investigation to the case shall be carried out following the complaint of the magistrate and that the defendant be re-tried subsequently for any offence that may be disclosed.

The conviction is therefore quashed and the order of the president set aside. The fine imposed to be refunded to the defendant.

Conviction quashed.

RE KUMARAENDRAN, AN ADVOCATE & SOLICITOR

[A.Cr.J. (Abdoolcader J.) March 28, 1975]
[Ipoh — Criminal Revision No. 6 of 1975]

Legal Profession — Advocate & solicitor — Contempt of court — Exchange of words between advocate and President of Sessions Court — President exercising powers of summary punishment — Principles of showing cause — Rules of Natural Justice — Imprisonment order invalid.

Subordinate Courts Act, 1948 — Third Schedule, para 26.

Federal Constitution, art. 126.

The advocate and solicitor in this case was defending an accused person charged with an offence under the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958. The record of the proceedings before the President of the Sessions Court showed that the advocate was "shouting and behaving in a manner which is most unexpected". The advocate made an application for the case to be heard before another President. The advocate said that if this application was not granted he would apply to be discharged from further acting for the accused. The President then allowed the application for the discharge of the advocate. The advocate then made the following remarks in court:

"If you say this (referring to the President's ruling), outside the court, I will take on (sic) you certainly".

The President of the Sessions Court then ruled that the advocate had committed contempt of court and committed the advocate to two days imprisonment. On exercise of criminal revision.

Held: (1) there is no doubt that the words uttered by the advocate constituted insulting and contumacious behaviour in outrageous and provocative language tantamount to a deliberate challenge to the authority of the learned President and was clearly a gross contempt in the face of the court;

(2) the power given to Sessions and Magistrate's Courts to take cognisance of any contempt of court and award